
Report to: Audit & Governance Committee **Date of Meeting:** 28th September 2011

Subject: Anti Fraud, Bribery and Corruption Policy

Report of: Head of Corporate Finance & ICT **Wards Affected:** All

Is this a Key Decision? No

Is it included in the Forward Plan?
No

Exempt/Confidential

No

Purpose/Summary

To update members on the revisions to the Anti Fraud, Bribery & Corruption Policy following the implementation of The Bribery Act 2010 and to seek approval of the revised policy.

Recommendation(s)

Members are requested to approve the revised Anti Fraud, Bribery & Corruption Policy.

How does the decision contribute to the Council's Corporate Objectives?

	<u>Corporate Objective</u>	<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1	Creating a Learning Community	✓		
2	Jobs and Prosperity	✓		
3	Environmental Sustainability	✓		
4	Health and Well-Being	✓		
5	Children and Young People	✓		
6	Creating Safe Communities	✓		
7	Creating Inclusive Communities	✓		
8	Improving the Quality of Council Services and Strengthening Local Democracy	✓		

Reasons for the Recommendation:

As part of the terms of reference of the Audit & Governance Committee, Members of this Committee are required to monitor Council policies relating to 'whistle-blowing' and the anti-fraud and anti-corruption strategy, anti money laundering, bribery and the Council's complaints process and review as necessary. As the Anti-Fraud and Corruption Policy has been revised following the implementation of The Bribery Act 2010, the Audit & Governance Committee are required to approve the changes in this policy.

What will it cost and how will it be financed?

There are no financial implications associated with the proposals in this report.

(A) Revenue Costs

(B) Capital Costs

Implications:

The following implications of this proposal have been considered and where there are specific implications, these are set out below:

Legal	
The legal implications are contained within the contents of the report. LD366/11	
Human Resources	
Equality	
1. No Equality Implication	<input checked="" type="checkbox"/>
2. Equality Implications identified and mitigated	<input type="checkbox"/>
3. Equality Implication identified and risk remains	<input type="checkbox"/>

Impact on Service Delivery:

The Bribery Act 2010 came into force in July 2011, the purpose of the Act is to reform criminal law of bribery to provide a new consolidated scheme of bribery offences to cover bribery both in the United Kingdom and abroad. Penalties under the Act include unlimited fines and/or imprisonment for up to ten years. Any action taken against the Council for committing or allowing an act of bribery to be committed could have a negative impact on service delivery in the community and cause reputational damage as well as financial damage to the Council..

What consultations have taken place on the proposals and when?

FD 1014 - The Head of Corporate Finance and ICT and Head of Corporate Legal Services have been consulted and any comments have been incorporated into the report.

The Anti-Fraud, Bribery and Corruption Policy was revised as part of a revision of a number of documents in consultation with the Members of the Overview and Scrutiny Working Group (Bribery Act), the Chief Internal Auditor, the then Acting Head of Corporate Legal Services and Corporate Personnel.

Are there any other options available for consideration?

No

Implementation Date for the Decision

Immediately following the Committee/Council/Working Group meeting.

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Background Papers:

The following papers are available for inspection by contacting the above officer.

Agenda Reports Pack – Overview and Scrutiny Working Group (Bribery Act)

Officers Code of Conduct

Code of Conduct Guide

Whistle-blowing Policy

Whistle-blowing Guidelines

Financial Procedure Rules

Contracts Procedure Rules

Bribery Act

1. Introduction/Background

- 1.1 The Bribery Act 2010 received Royal Assent on 8 April 2010 and came into force 3 months later in July 2010. The reform of the law on bribery dates back to the Nolan Committee's *Report on Standards in Public Life* in 1995, which was set up in response to concerns about unethical conduct by those in public office, and its suggestion that the Law Commission might usefully take forward the consolidation of the statute law on bribery. The purpose of the Act is to reform the criminal law of bribery to provide a new consolidated scheme of bribery offences to cover bribery both in the United Kingdom and abroad.
- 1.2 The Act replaces the offences at common law and under the Public Bodies Corrupt Practices Act 1989, the Prevention of Corruption Act 1906 and 1916 with two general offences. The first covers the offering, promising or giving of an advantage (broadly, offences of bribing another person), the second deals with the requesting, agreeing to receive or accepting of an advantage (broadly, offences of being bribed). The Act also creates a discrete offence of bribery of a foreign public official and a new offence where a commercial organisation fails to prevent bribery. Penalties under the Act include unlimited fines and/or imprisonment for up to ten years.
- 1.3 Of particular interest to local authorities, however, is the offence under Section 2 in which a person "requests, agrees to receive or accepts" and advantage of some kind in return for improperly performing, or allowing the improper performance of a "function or activity" where that function/activity is either a public nature or done in the course of a business. In the local authority context, a function or activity will be a "relevant function or activity" for the purposes of the Act if it is of a public nature and a person performing it is expected either:
 - a) to perform it in good faith;
 - b) to perform it impartially; or
 - c) the person is in a position of trust by virtue of performing it.
- 1.4 The Act makes it clear that if the bribery offence is committed with the consent/connivance of a senior officer of the local authority, then that person is also personally guilty of an offence. This will potentially apply to all those officers of the Council working at manager level and upwards.
- 1.5 Furthermore the Act creates a criminal offence of a failure to prevent bribery on the part of commercial organisations (including local authorities). However, the Act provides a statutory defence to a charge where an organisation can demonstrate that it has put in place adequate bribery prevention procedures. The government has issued guidance to support organisations in determining the sorts of bribery prevention measures that can be put in place.

2. Actions Undertaken

- 1.6 In order to inform members of the Act and seek views on how the Council should prepare for the same a report was submitted to Overview and Scrutiny Committee (Performance and Corporate Services) on the 9th November 2010, recommending that a 'task and finish' working group be established comprised of members from

that Committee and relevant officers with a view to completing the necessary work.

1.7 A working group was established, comprising Councillors Gibson, McGinnity and Papworth and relevant officers; Dave McCullough, then Acting Head of Legal Services, Janice Bamber - Chief Internal Auditor and Joanne Mercer – Personnel.

1.8 In order to prepare for the implementation of the Act a review of the following policies was undertaken:

Officers Code of Conduct
Code of Conduct Guide
Whistle-blowing Policy
Whistle-blowing Guidelines
Financial Procedure Rules
Contracts Procedure Rules
Bribery Act

appropriate changes were discussed and agreed by the aforementioned members.

1.9 This Audit & Governance Committee, as the Committee charged with the responsibility for fraud and governance arrangements is required to monitor and review the policies in relation to anti-fraud and anti-corruption and bribery and to this end the report is presented for comment and approval.